

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ASHLEIGH ANGELO, *et al.*,

Plaintiffs,

V.

THOMSON INTERNATIONAL,
INCORPORATED, *a California Corporation*,

Case No.: 1:21-cv-01609-JLT-CDB

PRETRIAL ORDER

Deadlines:

Motions in Limine Filing: June 4, 2024.
Oppositions to Motions in Limine: June 11, 2024
Trial Submissions: June 18, 2024

Jury trial: July 9, 2024, at 8:30 a.m., 5–10 days estimate

On May 20, 2024, the Court conducted a final pretrial conference. David Coyle and Eric Gruber appeared as counsel for plaintiff; Robert Sallander appeared as counsel for defendant. Having considered the parties' objections, the court issues this tentative pretrial order.

This case concerns the 2020 North American *Salmonella* Newport outbreak, associated with Thomson International Incorporated’s onions grown in the central and southern valleys of California. (See FAC, Doc. 59.) Plaintiffs are six individuals who contracted *Salmonella* infections after consuming onions allegedly “produced and sourced by Defendant Thomson International[.]” (*Id.* at ¶ 25.)¹ Plaintiffs bring four causes of action against Defendant as a result of their infections: (1) strict liability; (2) breach of express and implied warranties; (3) negligence; and (4) negligence *per se*. (*Id.* at ¶ 25.)¹

¹ On May 6, 2024, Plaintiffs voluntarily dismissed eight of the individual plaintiffs pursuant to Rule 41(a)(1)(A)(2). (Doc. 132.)

1 6-9.) Plaintiffs request economic and non-economic damages, as well as past and future medical
2 expenses. (*Id.* at 9.)

3 **A. JURISDICTION/ VENUE**

4 This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1332 based on diversity
5 jurisdiction. In addition, Defendant resides in Bakersfield, California (Doc. 1 at ¶ 2). Accordingly,
6 venue is proper in the United States District Court for the Eastern District of California. *See* 28 U.S.C.
7 § 1391(b)(1).

8 **B. JURY TRIAL**

9 The parties demanded a jury trial in this matter. (Doc. 59 at 1; Doc. 134 at 2.) The jury trial
10 will consist of eight jurors.

11 **C. UNDISPUTED FACTS**

12 The parties have not provided a statement of undisputed facts.

13 **D. DISPUTED FACTS**

14 1. Plaintiffs' Statement of Disputed Facts

15 a. Health department officials conducted an investigation of an outbreak of genetically
16 indistinguishable *Salmonella* Newport infections and determined that the subject
17 outbreak was linked to Defendant's adulterated onions.

18 b. During the investigation, a total of 11 environmental subsamples collected near
19 Thomson's growing fields tested positive for *Salmonella* Newport.

20 c. Thomson placed the allegedly adulterated onions into the stream of commerce.

21 d. Health department traceback analyses concluded that Plaintiffs more likely than not
22 consumed contaminated onions produced, sold, and distributed by Thomson.

23 e. Health department officials were not able to test any of the onions that allegedly
24 caused the subject outbreak because they had already been consumed by outbreak
25 victims.

26 f. Plaintiff Ashleigh Angelo's illness described in Plaintiffs' Complaint was
27 confirmed to be caused by *Salmonella* Newport.

1 g. Plaintiff Ashleigh Angelo's *Salmonella* infection was confirmed to match the
2 subject outbreak strain by whole genome sequencing.

3 h. Plaintiff Ashleigh Angelo was hospitalized from July 23, 2020 – July 25, 2020,
4 with *Salmonella* Newport. She was admitted to the hospital again on August 13,
5 2020 – August 16, 2020, with rectal bleeding related to her *Salmonella* Newport
6 infection.

7 i. Plaintiff Amanda Erickson's illness described in Plaintiffs' Complaint was
8 confirmed to be caused by *Salmonella* Newport.

9 j. Plaintiff Amanda Erickson's *Salmonella* infection was confirmed to match the
10 subject outbreak strain by whole genome sequencing.

11 k. Plaintiff Amanda Erickson was seen at Kalispell Regional Medical Center
12 Emergency Room on July 16, 2020 with cramping, diarrhea and vomiting related to
13 her *Salmonella* Newport infection. She was seen two days later on July 18, 2020 at
14 Kalispell Urgent Care Center with the same symptoms related to her *Salmonella*
15 Newport infection.

16 l. Plaintiff John Kahlie's illness described in Plaintiffs' Complaint was confirmed to
17 be caused by *Salmonella* Newport.

18 m. Plaintiff John Kahlie's *Salmonella* infection was confirmed to match the subject
19 outbreak strain by whole genome sequencing.

20 n. Plaintiff John Kahlie went to St Charles Hospital on August 11, 2020 with
21 complaints of diarrhea, nausea and vomiting related to his *Salmonella* Newport
22 infection.

23 o. Plaintiff Jose Mena's illness described in Plaintiffs' Complaint was confirmed to be
24 caused by *Salmonella* Newport.

25 p. Plaintiff Jose Mena's *Salmonella* infection was confirmed to match the subject
26 outbreak strain by whole genome sequencing.

27 q. Plaintiff Jose Mena went to McKenzie County Urgent Care on July 12, 2020 with

episodes of diarrhea, headaches and chills related to his *Salmonella* Newport infection. He returned on July 13, 2020 with unimproved symptoms and high fever related to his *Salmonella* Newport infection and discharged home on July 14, 2020.

- r. Plaintiff Linda Mitchell's illness described in Plaintiffs' Complaint was confirmed to be caused by *Salmonella* Newport.
- s. Plaintiff Linda Mitchell's *Salmonella* infection was confirmed to match the subject outbreak strain by whole genome sequencing.
- t. Plaintiff Linda Mitchell was evaluated at the Bryn Mawr Hospital Emergency Room on July 21, 2020, and was admitted to the hospital until July 27, 2020 in connection with her *Salmonella* Newport illness. Plaintiff Mitchell continued to test positive for *Salmonella* on August 26, 2020, and September 8, 2020. She was later diagnosed with arthritis requiring anti-inflammatory therapy.
- u. Plaintiff James Thompson's illness described in Plaintiffs' Complaint was confirmed to be caused by *Salmonella* Newport.
- v. Plaintiff James Thompson's *Salmonella* infection was confirmed to match the subject outbreak strain by whole genome sequencing.
- w. Plaintiff James Thompson was hospitalized at Legacy Salmon Creek Progressive Care from July 14, 2020 – July 20, 2020, with nausea, vomiting, and diarrhea in connection with his *Salmonella* Newport illness. On July 28, 2020, Mr. Thompson still complained of right abdominal pain. On August 13, 2020, he was diagnosed with a small abdominal hernia attributed to severe vomiting from his recent *Salmonella* infection.

2. Defendant's Statement of Disputed Facts²

- a. Thomson International, Inc. is a family-owned business that grows red onions, among other varieties, in Bakersfield and Holtville, California.

² It appears that the defendant may have intended this section to constitute “undisputed” facts.

- b. On July 10, 2020, the U.S. Centers for Disease Control and Prevention (“CDC”) identified an outbreak of *Salmonella* Newport infections, but had not identified a specific food, grocery store, or restaurant as the source of the outbreak.
- c. The FDA contacted Thomson as part of its investigation.
- d. The outbreak was assigned the identity, CDC ID 2007MLJJP-1.
- e. The FDA investigation of Thomson’s farms and packing houses took place from August 3 to approximately September 18, 2020, as part of its ongoing investigation, the FDA, with the assistance of the California Department of Public Health, sent a team of inspectors to Thomson’s packing facility and growing fields.
- f. They gathered nearly 2,000 samples for laboratory testing.
- g. The outbreak strain of *Salmonella* Newport has not been isolated in any TII onion, any product made with TII onions, in TII’s packing facility, on its equipment, or at TII’s growing fields.
- h. No TII onion has tested positive for the outbreak strain of *Salmonella* Newport.
- i. The FDA stated that “the *Salmonella* Newport outbreak strain (specific whole genome sequence [WGS]) was not identified in any of the nearly 2,000 subsamples tested.”
- j. The FDA stated that “a conclusive root cause of the outbreak could not be identified.”
- k. WGS is the subtyping of bacterial isolate that are submitted by culture- positive ill persons, and is performed within the PulseNet molecular laboratory surveillance system headed by the CDC.
- l. WGS is performed by sequencing the DNA or “genomic makeup” of each *Salmonella* isolate. Genomes from culture-positive patients, food, and environmental isolates are compared through sequencing to determine whether they are genetically similar.
- m. The first step in epidemiological investigations is to contact caregivers or case

1 patients with the outbreak strain without delay in order to gather information
2 about food and beverages consumed in the several days before the case patient
3 fell ill.

4 n. In the 2020 *Salmonella* Newport outbreak, early case patient interviews
5 indicated Mexican-style foods, with several subclusters associated with
6 Mexican-style restaurants identified, prompting supplementary interviews and
7 questionnaires focusing on Mexican-style food and food ingredients.

8 o. Other exposures assessed were white and yellow onions, red, round
9 tomatoes, Roma tomatoes, green peppers, hot peppers, cilantro, and ground
10 beef, which were identified in 3, 4, 4, 2, 4, 3, 6, and 5 subclusters,
11 respectively.

12 p. Most of Thomson's customers were wholesalers that place orders with TII by email
13 or telephone. Thomson did not sell its onions directly to retailers outside of
14 Southern California.

15 q. No outbreak clusters were in Southern California.

16 r. Thomson did not deliver or ship the vast majority of its produce to customers.

17 s. Purchasers made their own arrangements to pick up and transport produce from
18 Thomson's Bakersfield, CA facility.

19 t. Thomson provided its produce to these purchasers FOB.

20 u. Though unnecessary for Thomson's purposes, customers may have sometimes
21 listed a "ship to" address on purchase orders.

22 v. Thomson keeps records of any "ship to" addresses provided by its customers.

23 w. Neither HelloFresh nor EveryPlate was a TII's customer in 2020.

24 x. TII did not arrange transportation for shipment of TII product to HelloFresh or
25 EveryPlate in 2020.

26 y. EveryPlate did not purchase onions from Thomson.

27 z. EveryPlate had 32 suppliers of onions for its meal kit products in 2020, none of

which was Thomson.

- aa. None of EveryPlate's suppliers for meal kits in 2020 was HelloFresh.
- bb. EveryPlate submitted purchase orders to its suppliers for a given week.
- cc. The onions were shipped by the suppliers to EveryPlate's various distribution centers.
- dd. Subway was not a TII customer in 2020.
- ee. Plaintiff James Thompson claimed he became ill after eating at Los Jalepenos Restaurant, Vancouver, WA on 7/10/2020.
- ff. TII did not ship onions to Los Jalepenos Restaurant.
- gg. Plaintiff John Kahlie testified that he ate a sandwich with onions from the Portland Sub Company inside Circle K.
- hh. TII did not ship onions to Portland Sub Company or Circle K.
- ii. Plaintiff Jose Mena of Watford City, ND testified he didn't know if he had onions on a sandwich from Subway on July 2, 2020, or from stores he shopped at between July 6 to July 11, 2020.
- jj. Bank records show Mr. Mena made purchases at Albertsons on 7/2/2020; Kum & Go, Ndgsw Jack & Jill on 07/03/2020; Subway on July 6, 2020; Los Saguaro Mexican Restaurant on July 6, 2020; Wise Foods, Sams Club, and Save as You Go; Kum & Go, Oahu Bismarck, Cash Wise Foods, Save As You Go on July 7, 2020; El Paricutin Mexican on July 8, 2020; Burger King, Kum & Go, Family Dollar, Save As You Go, on July 9, 2020; Latte, Holiday Stations, Tomate Mexican, on July 10, 2020; and Save As You Go on July 10, 2020.
- kk. Plaintiff Amanda Erickson of West Glacier, MT testified she bought onions at Walmart in Kalispell, MT on June 18, 2020.
- ll. Erickson testified she did not eat the onions she purchased in June until July 15, 2020.
- mm. Plaintiff Linda Mitchell of Wayne, PA testified she purchased food from the

1 Great American Pub on July 20, 2020.

2 nn. TII did not supply onions to the Great American Pub.

3 oo. Plaintiff Ashleigh Angelo purchased a yellow onion from Walmart, located at 540

4 Marks St, Henderson, NV 89014 on July 3, 2020.

5 pp. Plaintiff Angelo did not know the brand of the onion, or who grew the onion or who
6 supplied the onion to Walmart, or who transported the onion to Walmart.

7 **E. DISPUTED LEGAL ISSUES**

8 1. Plaintiffs' Legal Issues

9 Plaintiffs' claims arise from the following legal theories: strict products liability, breach of
10 express warranty, breach of implied warranties of merchantability and fitness for intended use, and
11 negligence, as well as negligence per se claims arising from Defendant Thomson International's
12 violations of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. § 301, et seq.) and California Health
13 & Safety Code (Division 104 et seq.). Plaintiffs seek compensatory damages for past and future
14 medical, lost income, and general damages including pain, suffering, mental and physical discomfort,
15 emotional distress, loss of enjoyment of life, diminished quality of life, and other non-economic
16 damages.

17 2. Defendant's Legal Issues

18 Defendant responds to Plaintiffs' legal issues with the following:

19

- 20 • Strict Liability: Plaintiffs must prove they consumed an onion that was supplied,
21 packaged, distributed, or sold by Defendant Thomson International. No Plaintiff has
22 been able to identify the grower of the onion they allegedly consumed.
- 23 • Plaintiffs must further prove the onion Plaintiffs allegedly consumed was contaminated
24 with *Salmonella* while in Defendant Thomson International's custody and control—not
25 later in the chain of distribution. None of the onions allegedly consumed by Plaintiffs
26 were tested for *Salmonella*. After extensive investigation and sampling by the FDA
27 and investigators from California, Oregon, Washington, Utah, and other states of
28 onions grown by Thomson, no contaminated onions were located. Plaintiffs must

1 prove the onion allegedly consumed by Plaintiffs caused harm to Plaintiffs.
2

- 3 • Plaintiffs claim to have suffered gastrointestinal issues including diarrhea and nausea.
4 Some plaintiffs claim additional medical complications. The duration and severity of
5 each plaintiff's alleged illness varies by plaintiff.
- 6 • Breach of Warranty: Under this cause of action Plaintiffs have asserted the existence of
7 express and implied warranties. There is no evidence of any communication from
8 Thomson International to any plaintiff and, hence, no express warranty. The implied
9 warranty of merchantability requires Plaintiffs to prove they consumed an onion grown
10 by Thomson International, that was contaminated while in Thomson's possession, that
11 caused them harm. In this way, the breach of warranty cause of action is duplicative of
12 the strict liability cause of action.
- 13 • Negligence/Negligence *Per Se*: The Negligence and Negligence *Per Se* causes of
14 action both rest on duties allegedly imposed by statute. Plaintiffs have not identified
15 the precise statutory language they allege Thomson International violated, but have
16 generally referred to federal, state, and local statutes, laws regulations, safety codes,
17 and provisions pertaining to the manufacture, distribution, storage, and sale of their
18 food product, the Federal Food, Drug, and Cosmetic Act and the California Health &
19 Safety Code. To prevail under these causes of action, like in the prior two causes of
20 action discussed, Plaintiffs must prove they consumed Thomson International grown
21 onions, that were contaminated with *Salmonella* while in Thomson International's
22 possession, that harmed Plaintiffs.
- 23 • Thomson International Inc. denies that any onion it grew or placed in the stream of
24 commerce in 2020 was contaminated while in Thomson's possession; and affirmatively
25 asserts that, if any Plaintiff proves she or he ate a Thomson grown onion that is proven
26 to be contaminated, the contamination occurred after the onion left Thomson's
27 possession, custody, and control. In addition, Thomson asserts affirmative defenses as
28 follows:

- 1 • Uncertain Damages: Plaintiffs' losses, if any, are speculative and/or uncertain, and
2 therefore, not compensable.
- 3 • Equitable Indemnity/Comparative Contribution: In the event Defendant is held liable,
4 Defendant is entitled to a proportionate contribution of the total liability from persons,
5 firms, corporations or entities other than Defendant in accordance with eh principles of
6 equitable indemnity and contribution.
- 7 • Unforeseeable and Unreasonable Acts of Others: Plaintiffs' injuries, losses, or
8 damages, if any, were caused solely by the unforeseeable and unreasonable abuse,
9 misuse, or alteration of the product, by persons, parties or entities other than Defendant,
10 and not by any act or omissions for which Defendant may be held legally or equitably
11 responsible.
- 12 • Modification of the Onions: Plaintiffs' claims against Defendant are barred, in whole
13 or in part, by the alteration, modification, destruction, misuse, and/or abuse of the
14 onions after leaving Defendant's possession and control.
- 15 • Lack of Control: Plaintiffs' claims against Defendant are barred, in whole or in part, by
16 the lack of notice, lack of access, and lack of possession and control on the part of
17 Defendant.
- 18 • Compliance with Statutes: Defendant exercised reasonable care, acted in accordance
19 with or exceeded all applicable municipal, city, state and federal statutory, regulatory
20 and common law requirements, regulations, codes and standards.
- 21 • Result of Genetic Factors: Plaintiffs' injuries, symptoms, or problems, if any, were the
22 result of genetic and environmental and/or sociological factors over which Defendant
23 had no control and had no duty to control.
- 24 • Acts or Omissions of Other Parties: The injuries and damages of which Plaintiff
25 complains were caused, in whole or in part, by the acts or omissions of individuals or
26 entities other than Defendant and over whom Defendant had no control and no right of
27 control.
- 28

1 **F. DISPUTED EVIDENTIARY ISSUES/MOTIONS IN LIMINE**

2 Both parties intend to file motions in limine regarding the evidence to be used at trial. The
 3 purpose of a motion in limine is to establish in advance of the trial that certain evidence should not be
 4 offered at trial. “Although the Federal Rules of Evidence do not explicitly authorize in limine rulings,
 5 the practice has developed pursuant to the district court’s inherent authority to manage the course of
 6 trials.” *Luce v. United States*, 469 U.S. 38, 40 n. 2 (1984); *Jonasson v. Lutheran Child and Family*
 7 *Services*, 115 F. 3d 436, 440 (7th Cir. 1997). The Court will grant a motion in limine, and thereby bar
 8 use of the evidence in question, only if the moving party establishes that the evidence clearly is not
 9 admissible for any valid purpose. *Id.* The court does not encourage the filing of motions in limine
 10 unless they are addressed to issues that can realistically be resolved by the court prior to trial and
 11 without reference to the other evidence which will be introduced by the parties at trial.

12 **In advance of filing any motion in limine, counsel SHALL meet and confer to determine**
 13 **whether they can resolve any disputes and avoid filing motions in limine. Along with their**
 14 **motions in limine, the parties SHALL file a certification demonstrating counsel have in good**
 15 **faith met and conferred and attempted to resolve the dispute. Failure to provide the**
 16 **certification may result in the Court refusing to entertain the motion.**

17 Any motions in limine must be filed with the Court no later than **June 4, 2024**. The motion
 18 must clearly identify the nature of the evidence that the moving party seeks to prohibit the other side
 19 from offering at trial. Any opposition to the motion must be served on the other party, and filed with
 20 the Court no later than **June 11, 2024**, with any replies due no later than **June 14, 2024**. Upon
 21 receipt of any opposition briefs, the court will notify the parties if it will hear argument on any motions
 22 in limine.

23 **1. Plaintiffs:**

24 Plaintiffs represent that they will contest the admissibility of the mental health records of
 25 Plaintiff Ashleigh Angelo and any references to Plaintiff Linda Mitchell’s history with alcohol. They
 26 state that such information should be excluded under Rules 401 and 403 of the Federal Rules of
 27 Evidence as this information is not relevant and is more prejudicial than probative.

28 Plaintiffs also state that Defendant is requiring Plaintiffs to call custodial and foundation

1 witnesses for all records and bills in this matter and refuses to stipulate to the admissibility of any
2 evidence.

3 **2. Defendant:**

4 Thomson intends to file motions *in limine* to exclude the following categories of evidence:

- 5 1. Recalls of Thomson onions, including recalls by purchasers of Thomson onions (FRE
6 408);
- 7 2. FDA Investigation Report: Factors Potentially Contributing to the Contamination of
8 Red Onions Implicated in the Summer 2020 Outbreak of *Salmonella* Newport, and
9 other evidence based on its contents;
- 10 1. Expert Reports that Parrot Hearsay, including Dr. Shulman's Report Sections regarding
11 Amanda Erickson, John Kahlie, Jose Mena, and James Thompson, and Plaintiffs'
12 liability experts;
- 13 4. Plaintiffs' Medical Records, and Plaintiffs' testimony that they had *Salmonella*, that
14 they had the Outbreak Strain, and that they were sickened by Thomson onions;
- 15 5. All government reports tracing the *Salmonella* Newport outbreak to Thomson's onions,
16 including but not limited to the CORE Network Incident Summary Report and
17 Canadian Government reports;
- 18 6. All "line lists" and other evidence that any plaintiff had the "outbreak strain" of
19 *Salmonella* Newport (FRE 702, 703, Daubert).

20 In addition to the grounds specifically stated above, these motions will be made on the ground
21 that the evidence is hearsay not subject to any exception, is not relevant, and is inadmissible under
22 FRE 403.

23 **G. SPECIAL FACTUAL INFORMATION**

24 1. General Nature of Accident (E.D. Cal. L.R. 281(b)(6)(iv)(A)):

25 a. This case arises out of a 2020 outbreak of *Salmonella* Newport that various public
26 health authorities linked to Defendant's onions. The outbreak sickened individuals
27 in 48 states. Plaintiffs are all individuals that allege that they were exposed to
28 Defendant's contaminated onions and developed *Salmonella* Newport illnesses.

1 Testimonial and documentary evidence establishes that Defendant failed to follow
2 proper industry standards to prevent its products from becoming contaminated.

3 Plaintiffs assert claims of strict products liability, breach of express warranty,
4 breach of implied warranties of merchantability and fitness for intended use, and
5 negligence, as well as negligence per se claims arising from Defendant Thomson's
6 violations of the Federal Food, Drug and Cosmetic Act (21 U.S.C. § 301, et seq.)
7 and California Health & Safety Code (Division 104 et seq.) in connection with
8 Thomson's production and sale of onions contaminated with *Salmonella* Newport.
9 These claims arise from *Salmonella* infections each Plaintiff sustained as a result of
10 consuming Defendant's contaminated onions. Because this matter involves product
11 liability claims, strict liability applies. The doctrine of res ipsa loquitur does not
12 apply, however.

13 2. Specific Information Regarding Each Plaintiff (E.D. Cal. L.R. 281(b)(6)(iv)(B)):

14 a. Plaintiff Ashleigh Angelo is 27 years old. She sustained a *Salmonella* Newport
15 illness and alleged that she developed autoimmune pancreatitis and active colitis.
16 Ms. Angelo's pancreatitis is likely to exist for years. She has suffered and
17 continues to suffer debilitating injuries and damages which will require on-going
18 medical care. Ms. Angelo was hospitalized from July 23, 2020 to July 25, 2020 and
19 readmitted from August 13, 2020 to August 16, 2020 with rectal bleeding. Ms.
20 Angelo's medical expenses total \$179,942.83. Ms. Angelo has a total of \$322 in
21 wage loss. Ms. Angelo made \$11.50 per hour and missed a total of 28 hours. Ms.
22 Angelo worked from home and worked even though she was ill (vomiting, diarrhea,
23 nausea and abdominal pain). Ms. Angelo suffered pain and suffering caused by her
24 *Salmonella* illness. General damages for past and future pain and suffering, mental
25 and physical discomfort, emotional distress, loss of enjoyment of life, diminishment
26 in quality of life, and other similar damages, to be determined by the jury.

27 b. Plaintiff Amanda Erickson is 41 years old. She sustained a *Salmonella* Newport
28 illness. Ms. Erickson was seen at the Emergency Room on July 16, 2020 and

Urgent Care on July 18, 2020. Mr. Ericksons' medical expenses total \$10,614.04. Plaintiff had to go stay at a hotel during her illness at a cost of \$514.24. Ms. Erickson made \$17 per hour. In addition, she was paid \$170 a day for being a manager. Ms. Erickson missed a total of five full days of work (40 hours), putting her wage loss at \$1,530.00. General damages for past and future pain and suffering, mental and physical discomfort, emotional distress, loss of enjoyment of life, diminishment in quality of life, and other similar damages, to be determined by the jury.

- c. Plaintiff John Kahlie is 56 years old. He sustained a *Salmonella* Newport illness. Mr. Kahlie spent 1 day in the hospital on August 11, 2020. Mr. Kahlie's medical expenses total \$3,508.57. Mr. Kahlie missed 11 days of work and lost out on commissions for several vehicles he would have sold as a salesman, and eventually lost his job. In the two months leading up to his illness, Mr. Kahlie's average monthly gross pay was \$5,958.89. For the month he was sick, his gross pay was \$2,206.40. Thus, he lost out on \$3,752.49 in pay. General damages for past and future pain and suffering, mental and physical discomfort, emotional distress, loss of enjoyment of life, diminishment in quality of life, and other similar damages, to be determined by the jury.
- d. Plaintiff Jose Mena is 49 years old. He sustained a *Salmonella* Newport illness. Mr. Mena went to urgent care on July 12, 2020 and returned on July 13, 2020 and was discharged the next day. Mr. Mena's medical expenses total \$18,973.56. Mr. Mena missed 50 hours of work. He made \$30.94 per hour. His wage loss total is \$1,547.00. General damages for past and future pain and suffering, mental and physical discomfort, emotional distress, loss of enjoyment of life, diminishment in quality of life, and other similar damages, to be determined by the jury.
- e. Plaintiff Linda Mitchell is 67 years old. She sustained a *Salmonella* Newport illness. Ms. Mitchell was hospitalized from July 21, 2020 to July 27, 2020. Months later she was still having abnormal unformed stools and testing positive for

Salmonella. Ms. Mitchell alleges that she developed reactive arthritis from her *Salmonella* illness. Ms. Mitchell's reactive arthritis is likely to be persistent for years to come. Mrs. Mitchell's medical expenses are \$80,798.50. General damages for past and future pain and suffering, mental and physical discomfort, emotional distress, loss of enjoyment of life, diminishment in quality of life, and other similar damages, to be determined by the jury.

f. Plaintiff James Thompson is 59 years old. He sustained a *Salmonella* Newport illness. Mr. Thompson was hospitalized from July 14, 2020 to July 20, 2020. On July 28, 2020, Mr. Thompson still complained of right abdominal pain. On August 13, 2020, he was diagnosed with a small abdominal hernia attributed to severe vomiting from his recent *Salmonella* infection. Mr. Thompson still continues to have abdominal pain. Mr. Thompson's medical expenses total \$50,591.74. Mr. Thompson missed a total of 20 days at work. His average wage was \$500 per work day. Mr. Thompson's wage loss totals \$10,000.00. General damages for past and future pain and suffering, mental and physical discomfort, emotional distress, loss of enjoyment of life, diminishment in quality of life, and other similar damages, to be determined by the jury.

H. RELIEF SOUGHT

1. Plaintiffs

Plaintiffs request compensatory and general damages for the following individuals:

a. Ashleigh Angelo

Medical Expenses \$179,942.83

Lost Wages \$ 322.00

General damages To be determined by the jury

b. Amanda Erickson

Medical Expenses \$10,614.04

Lost Wages \$ 1,530.00

Hotel expenses \$ 514.24

1	General damages	To be determined by the jury
2	c. John Kahlie	
3	Medical Expenses	\$3,508.57
4	Lost Wages	\$3,752.49
5	General damages	To be determined by the jury
6	d. Jose Mena	
7	Medical Expenses	\$18,973.56
8	Lost Wages	\$1,547.00
9	General damages	To be determined by the jury
10	e. Linda Mitchell	
11	Medical Expenses	\$80,798.50
12	General damages	To be determined by the jury
13	f. James Thompson	
14	Medical Expenses	\$50,591.74
15	Lost Wages	\$10,000.00
16	General damages	To be determined by the jury

17 2. **Defendant**

18 Defendant has not made a specific request for relief in the parties' Joint Pretrial Statement.

19 **I. ABANDONED ISSUES**

20 The following affirmative defenses have been abandoned by Defendant Thomson
 21 International: Failure to State a Claim; Failure to Mitigate; Performance; No Warranties; and Failure
 22 to Join Necessary Parties.

23 **J. WITNESSES**

24 The following is a list of witnesses that the parties expect to call at trial, including rebuttal and
 25 impeachment witnesses. NO WITNESS, OTHER THAN THOSE LISTED IN THIS SECTION,
 26 MAY BE CALLED AT TRIAL UNLESS THE PARTIES STIPULATE OR UPON A SHOWING
 27 THAT THIS ORDER SHOULD BE MODIFIED TO PREVENT "MANIFEST INJUSTICE." Fed. R.
 28 Civ. P. 16(e); Local Rule 281(b)(10).

1 **1. Plaintiffs' Witnesses**

- 2 • John Besser (expert)
- 3 • Peter Gerner Smidt, M.D. (expert)
- 4 • Frank Yiannas, MPH (expert)
- 5 • Kevin Elfering (expert)
- 6 • Brandon Adcock, California Department of Public Health
- 7 • Jack Thomson
- 8 • Neftali Hernandez
- 9 • David Marquez
- 10 • Nancy Lugo
- 11 • Nancy Anspach
- 12 • Lauren Edwards, Michigan Department of Agriculture and Rural Development
- 13 • Trevor Flint
- 14 • Sanford T. Shulman, M.D.
- 15 • Ernest Julian, Ph.D.
- 16 • Ashleigh Angelo
- 17 • Amanda Erickson
- 18 • John Kahlie
- 19 • Jose Mena
- 20 • Linda Mitchell
- 21 • James Thompson
- 22 • Any witnesses identified by Defendant
- 23 • Custodial witnesses to the extent necessary to establish authenticity, foundation, etc.
- 24 • Any witness required for rebuttal, impeachment, and/or rehabilitation
- 25 • Alexandra Lozo
- 26 • Christopher Hanchett
- 27 • Ryan Kahlie

- 1 • Hilda Mena
- 2 • Brandon Mitchell
- 3 • Kristina Guver
- 4 • Claudette Thompson

5 **2. Defendant's Witnesses**

- 6 • Jack Thomson
- 7 • Elaine Thomson
- 8 • Nancy Anspach
- 9 • Nancy Lugo
- 10 • Shantee Bonilla
- 11 • Neftali Hernandez
- 12 • David Marquez
- 13 • Chris Solorio
- 14 • Graciela Adame
- 15 • Alvaro Soto
- 16 • Hilda Moen
- 17 • Dr. Martin Wiedmann, Ph.D. (expert)
- 18 • Melvin Kramer, Ph.D., M.P.H. (expert)
- 19 • Daniel Coto, M.P.H., R.E.H.S. (expert)
- 20 • Stephen Blackwell, M.S., R.E.H.S. (expert)
- 21 • Jonathan Ellis, M.D., F.A.C.P., Q.M.E. (expert)
- 22 • Daniel Wallace, M.D., F.A.C.P., M.A.C.R. (expert)

23 2. **The court does not allow undisclosed witnesses to be called for any purpose,**
24 **including impeachment or rebuttal, unless they meet the following criteria:**

25 a. The party offering the witness demonstrates that the witness is for the purpose of
26 rebutting evidence that could not be reasonably anticipated at the pretrial
27 conference, or

b. The witness was discovered after the pretrial conference and the proffering party makes the showing required in paragraph B, below.

3. Upon the post pretrial discovery of any witness a party wishes to present at trial, the party shall promptly inform the court and opposing parties of the existence of the unlisted witnesses so the court may consider whether the witnesses shall be permitted to testify at trial. The witnesses will not be permitted unless:

- a. The witness could not reasonably have been discovered prior to the discovery cutoff;
- b. The court and opposing parties were promptly notified upon discovery of the witness;
- c. If time permitted, the party proffered the witness for deposition; and
- d. If time did not permit, a reasonable summary of the witness's testimony was provided to opposing parties.

K. EXHIBITS, SCHEDULES AND SUMMARIES

Plaintiffs' Exhibits are those listed in the Plaintiffs' Exhibit List, as set forth in the parties' Joint Pretrial Statement. (Doc. 134 at 19–21.) The Court incorporates Plaintiffs' Exhibit List by reference and will refer to them as "Attachment A" to this Order.

Defendant's Exhibit List are those listed in Exhibit C to the parties' Joint Pretrial Statement, as set forth in the parties' Joint Pretrial Statement. (Doc. 134 at 21; Ex. C, Doc. 134.) The Court incorporates Defendant's Exhibit List by reference and will refer to them as "Attachment B" to this Order.

NO EXHIBIT, OTHER THAN THOSE LISTED IN ATTACHMENTS A-C, MAY BE ADMITTED UNLESS THE PARTIES STIPULATE OR UPON A SHOWING THAT THIS ORDER SHOULD BE MODIFIED TO PREVENT “MANIFEST INJUSTICE.” Fed. R. Civ. P. 16(e); Local Rule 281(b)(11).

1. For a party to use an undisclosed exhibit for any purpose, they must meet the following criteria:

- a. The party proffering the exhibit demonstrates that the exhibit is for the purpose of rebutting evidence that could not have been reasonably anticipated, or
- b. The exhibit was discovered after the issuance of this order and the proffering party

1 makes the showing required in paragraph 2, below.

2 2. Upon the discovery of exhibits after the discovery cutoff, a party shall promptly inform
3 the court and opposing parties of the existence of such exhibits so that the court may consider their
4 admissibility at trial. The exhibits will not be received unless the proffering party demonstrates:
5 a. The exhibits could not reasonably have been discovered earlier;
6 b. The court and the opposing parties were promptly informed of their existence; and
7 c. The proffering party forwarded a copy of the exhibits (if physically possible) to the
8 opposing party. If the exhibits may not be copied the proffering party must show that
9 it has made the exhibits reasonably available for inspection by the opposing parties.

10 The parties must exchange exhibits no later than June 11, 2024. On or before June 18, 2024,
11 counsel **SHALL** meet and confer to discuss any disputes related to the above listed exhibits and to
12 pre-mark and examine each other's exhibits. Any exhibits not previously disclosed in discovery
13 **SHALL** be provided via e-mail or overnight delivery so that it is received by the above exhibit
14 exchange deadline.

15 1. At the exhibit conference, counsel will determine whether there are objections to the
16 admission of each of the exhibits and will prepare separate indexes; one listing joint exhibits, one
17 listing Plaintiffs' exhibits and one listing Defendant's exhibits. In advance of the conference, counsel
18 must have a complete set of their proposed exhibits to be able to fully discuss whether evidentiary
19 objections exist. Thus, any exhibit not previously provided in discovery **SHALL** be provided at least
20 five court days in advance of the exhibit conference.

21 2. At the conference, counsel shall identify any duplicate exhibits, i.e., any document
22 which both sides desire to introduce into evidence. These exhibits **SHALL** be marked as joint exhibits
23 and numbered as directed above. Joint exhibits **will** be admitted into evidence upon introduction and
24 motion of a party, without further foundation.

25 All joint exhibits will be pre-marked with numbers preceded by the designation "JT" (e.g., JT/1,
26 JT/2, etc.). Plaintiffs' exhibits will be pre-marked with numbers beginning with 1 by the designation
27 PX (e.g., PX1, PX2, etc.). Defendant's exhibits will be pre-marked with numbers beginning with 501
28 preceded by the designation DX (e.g., DX501, DX502, etc.). The parties **SHALL** number each page of

1 any exhibit exceeding one page in length (e.g., PX1-1, PX1-2, PX1-3, etc.).

2 If originals of exhibits are unavailable, the parties may substitute legible copies. If any
3 document is offered that is not fully legible, the Court may exclude it from evidence.

4 Each joint exhibit binder shall contain an index which is placed in the binder before the
5 exhibits. The index shall consist of a column for the exhibit number, one for a description of the
6 exhibit and one column entitled "Admitted in Evidence" (as shown in the example below).

7 **INDEX OF JOINT EXHIBITS**

EXHIBIT#	DESCRIPTION	ADMITTED IN EVIDENCE

11 3. As to any exhibit which is not a joint exhibit but to which there is no objection to its
12 introduction, the exhibit will likewise be appropriately marked, i.e., as PX1, or as DX501 and will be
13 indexed as such on the index of the offering party. Such exhibits will be admitted upon introduction
14 and motion of the party, without further foundation.

15 4. Each exhibit binder shall contain an index which is placed in the binder before the
16 exhibits. Each index shall consist of the exhibit number, the description of the exhibit and the three
17 columns as shown in the example below.

18 **INDEX OF EXHIBITS**

EXHIBIT#	DESCRIPTION	ADMITTED IN EVIDENCE	OBJECTION FOUNDATION	OBJECTION OTHER

23 5. On the index, as to exhibits to which the only objection is a lack of foundation, counsel
24 will place a mark under the column heading entitled "Objection Foundation."

25 6. On the index, as to exhibits to which there are objections to admissibility that are not
26 based solely on a lack of foundation, counsel will place a mark under the column heading entitled
27 "Other Objections."

28 7. As to each exhibit which is not objected to in the index, it shall be marked and received

1 into evidence and will require no further foundation.

2 After the exhibit conference, Plaintiff and counsel for the defendants **SHALL** develop four
3 complete, legible sets of exhibits. The parties **SHALL** deliver three sets of their exhibit binders to the
4 Courtroom Clerk and provide one set to their opponent, no later than 4:00 p.m., on **July 2, 2024**.
5 Counsel **SHALL** determine which of them will also provide three sets of the joint exhibits to the
6 Courtroom Clerk.

7 8. The Parties **SHALL** number each page of any exhibit exceeding one page in length.

8 **L. POST-TRIAL EXHIBIT RETENTION**

9 Counsel who introduced exhibits at trial **SHALL** retrieve the original exhibits from the
10 courtroom deputy following the verdict in the case. The parties' counsel **SHALL** retain possession of
11 and keep safe all exhibits until final judgment and all appeals are exhausted.

12 **M. DISCOVERY DOCUMENTS**

13 The following is a list of discovery documents – portions of depositions, answers to
14 interrogatories, and responses to requests for admissions – that the parties expect to offer at trial.
15 **NO DISCOVERY DOCUMENT, OTHER THAN THOSE LISTED IN THIS SECTION, MAY BE**
16 **ADMITTED UNLESS THE PARTIES STIPULATE OR UPON A SHOWING THAT THIS ORDER**
17 **SHOULD BE MODIFIED TO PREVENT “MANIFEST INJUSTICE.”** Fed. R. Civ. P. 16(e); Local
18 Rule 281(b)(12).

19 **1. Plaintiffs' Documents**

20 Plaintiffs reserve the right to use any and all portions of depositions, answers to interrogatories,
21 and responses to requests for admission for impeachment and/or rehabilitation purposes.

22 **2. Defendant's Documents**

23 Defendant intends on proffering at trial:

24 a. The Responses to Interrogatories, Set One, answers Nos. 1–3, 12, & 14 and the
25 Responses to Document Production, Set One, Nos. 2 & 11 for: Ashleigh Angelo,
26 Linda Mitchell, Amanda Erickson, Jose Mena, James Thompson, and John Kahlie;
27 b. Defendant's Responses to Interrogatories, Set One of Plaintiff Ashleigh Angelo
28 Nos. 1–10;

- 1 c. Defendant's Responses to Request for Production of Documents, Set One of
- 2 Plaintiff Ashleigh Angelo Nos. 1, 3, 8–45, 48–59, 61
- 3 d. Defendant's Responses to Request for Admissions of Plaintiffs Ashleigh Angelo,
- 4 Amanda Erickson, James Thompson, Jose Mena, John Kahlie, Linda Mitchell, Nos.
- 5 1–24;
- 6 e. Defendant's Responses to Request for Admissions, Set One of Plaintiffs Angelo,
- 7 Kahlie, Erickson, Mena, Mitchell, and Thompson Nos. 1–16; and
- 8 f. Defendant reserves the right to use deposition testimonies and discovery responses
- 9 other than these listed above.

10 **N. FURTHER DISCOVERY OR MOTIONS**

11 No further discovery is sought by either party.

12 **O. STIPULATIONS**

13 The parties have not agreed upon any stipulations.

14 **P. AMENDMENTS/ DISMISSALS**

15 Plaintiffs anticipate seeking leave at trial to amend the Complaint to assert a claim for punitive
16 damages, based on the testimony and other evidence presented to the jury. Defendant contends that
17 any new claims including punitive damages claims should be precluded at trial because plaintiffs
18 failed to plead such claims in the complaint, failed to disclose such claims in Rule 26 initial
19 disclosures, failed to include financial condition evidence of Thomson in exhibits, and because factual
20 discovery closed last August. Defendant reserves the right to oppose new claims on additional
21 grounds at trial.

22 Plaintiffs are reminded that any request to amend the complaint at trial must demonstrate the
23 requirements of with Federal Rules of Civil Procedure 16 in addition to Rule 15.

24 **Q. SETTLEMENT NEGOTIATIONS**

25 On May 9, 2024, all plaintiffs except for James Thompson made settlement demands which
26 Defendant is considering at this time. At the pretrial conference, the defense made clear that the
27 defendants are not interested in participating in a settlement conference. Consequently, **no later than**
28 **June 7, 2024**, Defendant SHALL respond to each demand with an acceptance, a counteroffer, or a

1 rejection of the offer.

2 **R. AGREED STATEMENT**

3 The parties have drafted the following neutral statement to use during jury selection:

4 In this case, plaintiffs all suffered from *Salmonella* illnesses during the summer
5 of 2020. They contend their *Salmonella* infections were caused by exposure to
6 onions grown and sold by defendant Thomson. Plaintiffs brought their case
7 against Thomson seeking damages for their alleged injuries.

8 **S. SEPARATE TRIAL OF ISSUES**

9 There are no separate trial of issues at this time.

10 **T. APPOINTMENT OF IMPARTIAL EXPERTS**

11 None requested.

12 **U. ATTORNEYS' FEES**

13 The parties will seek an award of attorneys' fees as appropriate as a post-trial motion.

14 **V. TRIAL DATE/ ESTIMATED LENGTH OF TRIAL**

15 Jury trial is set for **July 9, 2024**, at 8:30 a.m. before the Honorable Jennifer L. Thurston at the
16 Robert E. Coyle United States Courthouse, 2500 Tulare Street, Fresno, California. Trial is expected to
17 last 5–10 days.

18 **W. TRIAL PREPARATION AND SUBMISSIONS**

19 **1. Trial Briefs**

20 The parties are relieved of their obligation under Local Rule 285 to file trial briefs. If any
21 party wishes to file a trial brief, they must do so in accordance with Local Rule 285 and be filed on or
22 before **June 18, 2024**.

23 **2. Jury Voir Dire**

24 The parties are required to file their proposed voir dire questions, in accordance with Local
25 Rule 162.1, on or before **June 21, 2024**.

26 **3. Jury Instructions & Verdict Form**

27 The parties shall serve, via e-mail or fax, their proposed jury instructions in accordance with
28 Local Rule 163 and their proposed verdict form on one another no later than **June 4, 2024**. The parties

1 shall conduct a conference to address their proposed jury instructions and verdict form no later than
 2 June 11, 2024. At the conference, the parties **SHALL** attempt to reach agreement on jury instructions
 3 and verdict form for use at trial. The parties shall file all agreed-upon jury instructions and verdict
 4 form no later than June 18, 2024, and identify such as the agreed-upon jury instructions and verdict
 5 forms. At the same time, the parties **SHALL** lodge via e-mail a copy of the joint jury instructions and
 6 joint verdict form (in Word format) to JLTOrders@caed.uscourts.gov.

7 **If and only if, the parties after genuine, reasonable and good faith effort** cannot agree upon
 8 certain specific jury instructions and verdict form, the parties shall file their respective proposed
 9 (disputed) jury instructions and proposed (disputed) verdict form no later than June 18, 2024, and
 10 identify such as the disputed jury instructions and verdict forms. At the same time, the parties
 11 **SHALL** lodge via e-mail, a copy of his/their own (disputed) jury instructions and proposed (disputed)
 12 verdict form (in Word format) to JLTOrders@caed.uscourts.gov.

13 In selecting proposed instructions, the parties shall use Ninth Circuit Model Civil Jury
 14 Instructions or California's CACI instructions to the extent possible. All jury instructions and verdict
 15 forms shall indicate the party submitting the instruction or verdict form (i.e., joint, plaintiffs',
 16 defendant's, etc.), the number of the proposed instruction in sequence, a brief title for the instruction
 17 describing the subject matter, the **complete** text of the instruction, and the legal authority supporting
 18 the instruction. Each instruction **SHALL** be numbered.

19 **X. OBJECTIONS TO PRETRIAL ORDER**

20 Within 14 days after the date of service of this order, the parties may file written objections to
 21 any of the provisions set forth in this order. The parties may file any replies to the objections within
 22 seven days. The objections shall clearly specify the requested modifications, corrections, additions or
 23 deletions. **If no objections are filed, the order will become final without further order of the Court.**

24 The parties are reminded that pursuant to Rule 16(e) of the Federal Rules of Civil Procedure and
 25 Local Rule 283, this order shall control the subsequent course of this action and shall be modified only
 26 to prevent manifest injustice.

27 **Y. MISCELLANEOUS MATTERS**

28 Counsel are advised that the Court's trial schedule, absent other court conflicts, is as follows:

1 The first day of trial and until jury selection is completed, the trial day will begin at 8:30 a.m. and
2 complete around 4:30 p.m. with an hour-long lunch break. Until the jury begins deliberating, the trial
3 day will begin at 8:00 a.m. and complete at 1:30 p.m. with no lunch break, though the trial will break
4 for two breaks during the trial day. Once the jury begins deliberating, the jury will set their own
5 schedule.

6 Additionally, the Court notes that Plaintiffs represent that Plaintiff James Thompson is deaf
7 and will need a sign language interpreter at trial. **The Court will provide the ASL interpreter**. Also,
8 witnesses Neftali Hernandez and David Marquez will need Spanish language interpreters at trial. **The**
9 **party proffering the witnesses are responsible for providing a Federally Certified Court**
10 **Interpreter**. Plaintiffs request the ability to call witnesses through videoconferencing, *e.g.*, Zoom.
11 Counsel **SHALL** confer and come to agreement as to this presentation of witnesses by Zoom.

12 **Z. COMPLIANCE**

13 Strict compliance with this order and its requirements is mandatory. All parties and their
14 counsel are subject to sanctions, including dismissal or entry of default, for failure to fully comply
15 with this order and its requirements.

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17 IT IS SO ORDERED.

18 Dated: May 21, 2024


UNITED STATES DISTRICT JUDGE

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1 Attachment A
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The following is Plaintiffs' Exhibit List, as incorporated here:

No.	BATES No.	Description
1.		Curriculum Vitae of John Besser
2.		Report of John Besser
3.		Curriculum Vitae of Peter Gerner Smidt
4.		Report of Peter Gerner Smidt
5.		Curriculum Vitae of Frank Yiannas
6.		Report of Frank Yiannas
7.		Curriculum Vitae of Kevin Elfering
8.		Reports of Kevin Elfering
9.	TII0000032419– 32430	Pre-Harvest Risk Assessment
10.	TII000002758– 2760	FDA Discussion Points from Thompson International Inspection Provided Orally by Commander Cindy White, FDA Compliance Officer
11.		Investigation Report: Factors Potentially Contributing to the Contamination of Red Onions Implicated in the Summer 2020 Outbreak of <i>Salmonella</i> Newport
12.		Declarations of Trevor Flint
13.		Bi-national Outbreak of <i>Salmonella</i> Newport infections linked to onions: the United States experience
14.	THIHAN007897– 7901	Michigan Department of Agriculture, 9:22 and Rural Development Joint After Action Report for <i>Salmonella</i> Newport in Onions Response
15.	THIHAN007475– 7477	Email Exchange from Lisa Joseph, 36: 2 dated 8/11/20

1	16.	Onions 52 Bill of Lading
2	17.	TII000032174– 32177
3	18.	TII0000032157– 32159
4	19.	TII000004439; TII000 21994; TII0002353; TII0002355; TII000 2358; TII00030990; TII00030991; TII00031004; TII00031005; TII00030999; TII00031000; TII00030995– 30996; TII00031013; TII00031014; TII00031008; TII00031009; TII00027389; TII00022065
5	20.	TII00026958– 26962
6		Outgoing Shipments
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1	21.	TII000024870– 24877	Machinery Email
2	22.	TII00003672–3677	Master Sanitation SOP
3	23.	TI00003655–3661	Daily Cleaning Logs
4	24.	TII000032096– 32127	GAPS Table of Contents
5	25.	TII000032174- 32177	Water Sampling SOP
6	26.	TII000023362- 23380	Gladstone E and W 2020 Audit
7	27.	TII000023393- 23412	Ranch 3 2020 Audit
8	28.	TII000017599	Water Analysis Test
9	29.	TII000002758	FDA Discussion Points
10	30.		FDA Memo
11	31.	TII000020661– 20662	Costco Email to Shawn Hartley

1	32.	TII000024896– 24900	Corrective Action Costco Document
2	33.	[Ex. A to Pretrial Stmt.]	Plaintiffs' Medical Records broken down per plaintiff
3	34.	[Ex. A to Pretrial Stmt.]	Plaintiffs' Billing Records, broken down per plaintiff
4	35.		Curriculum Vitae of Sanford T. Shulman, M.D.
5	36.		Report of Sanford T. Shulman, M.D.
6	37.		Curriculum Vitae of Ernest Julian, Ph.D.
7	38.		Report of Ernest Julian, Ph.D.
8	39.	[Ex. A to Pretrial Stmt.]	Health Department records, broken down per plaintiff
9	40.	[Ex. A to Pretrial Stmt.]	Plaintiffs' Wage Loss Documents, broken down per plaintiff
10	41.	[Ex. A to Pretrial Stmt.]	Proof of purchase, broken down per plaintiff
11	42.	[Ex. A to Pretrial Stmt.]	Plaintiff Erickson's hotel receipt
12	43.	[Ex. B to Pretrial Stmt.]	Expert documents
13	44.		All exhibits to depositions

1 Attachment B
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The following is Defendant's Exhibit List, as incorporated here:

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5 **Defense Exhibit 1: TII Food Safety Program**
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No.	Begin Bates	End Bates	Description
1.	TII000003553	TII000003569	Food Safety Program
2.	TII000003617	TII000003645	Food Defense Plan
3.	TII000003743	TII000003859	Glad2e product use log for Kern county.
4.	TII000005879	TII000005921	Food Safety Program
5.	TII000017511	TII000017520	Primus Labs Packaging Audit Checklist.
6.	TII000025666	TII000025666	Jose Perez PSA Grower Training Course.
7.	TII000025667	TII000025667	David Marquez PSA Grower Training Course, 2019
8.	TII000025668	TII000025668	Nancy Anspach FSPCA Preventive Controls for Human Food, 02/08/2019.
9.	TII000025669	TII000025669	Nancy Anspach PSA Grower Training Course.
10.	TII000025670	TII000025670	Neftali Hernandez PSA Grower Training Course Certificate
11.	TII000026686	TII000026708	Primus Final Audit

1			Report for Brawley
2			Onions located at
3			Hilfiker Rd & Anderholt
4			Rd & McCabe Rd,
5			Brawley, CA
6	12.	TII000032071	Food Safety Policy Statement
7	13.	TII000032072	Food Safety Standards in Spanish.
8	14.	TII000032073	GAP Food Safety Plan
9	15.	TII000032078	TII Org Chart, Ranch Safety Team
10	16.	TII000032080	General Training SOP.
11	17.	TII000032090	Food Safety Plan, Master Document List.
12	18.	TII000032241	Food Defense Plan
13	19.	TII000032249	R3 Food Defense Assessment.
14	20.	TII000032257	Personal Food Training SOP
15	21.	TII000032324	Food Safety Plan - Farming Operations.
16	22.	TII000032326	2020 Food Safety Plan - Farming Operations.
17	23.	TII000033949	Micro Testing SOPs with Michelson Lab Reports.
18	24.	TII000034392	JJ Harvesting records. Food Safety Training certificates for Angel Nava, Manuel

1	2	3	4	Cano, Joel Ocampo, Antonio Carranza, Froylan Chiquito, and Teresa Castillo.
5	25.	TII000034448	TII000034502	JJ Harvesting records, food safety, cleaning logs, SOPs, certificates.
6	26.	TII000034503	TII000034553	JJ Harvesting records, restroom service logs, water report, permits, SOPs, certificates.
7	27.	TII000034554	TII000034770	JJ Harvesting records. SOPs, cleaning logs, training certification.
8	28.	TII000034771	TII000035417	JJ Harvesting records, SOPs, sanitation, temperature logs, certifications.
9	29.	TII000035418	TII000035567	JJ Harvesting records. SOPs, sanitation, certificates.
10	30.	TII000035568	TII000035846	JJ Harvesting records, SOPs, sanitation, temperature logs.
11	31.	TII000035847	TII000036026	JJ Harvesting records, SOPs, temperature logs, certifications.
12	32.	TII000036027	TII000036181	J.J. Harvesting records, SOPs, sanitization

			records, temperature logs, certificates.
33.	TII000036182	TII000036926	JJ Harvesting Records. Food safety, SOPs, certificates.
34.	TII000036927	TII000036990	JJ Harvesting records. Food safety training meeting, SOPs, certificates.
35.	TII000036991	TII000037042	JJ Harvesting records. Food safety, cleaning, SOPs, certificates.
36.	TII000037043	TII000037091	JJ Harvesting records. Food safety, SOPs, certificates.
37.	TII000037092	TII000037182	JJ Harvesting records. Food safety, SOPs, certificates.
38.	TII000037183	TII000037354	JJ Harvesting records. SOPs, food safety, certificates of completion.
39.	TII00069899	TII00069904	IPC/Subway Request for Information

Defense Exhibit 2: TII Standard Operating Procedures

No.	Begin Bates	End Bates	Description
1.	TII000003465	TII000003473	Master Sanitation SOP
2.	TII000003474	TII000003476	Incoming Materials SOP
3.	TII000003507	TII000003515	Chemical and Cleaning Inventory List
4.	TII000003516	TII000003518	Product log with images of cleaning products used.
5.	TII000003540	TII000003552	TII Cleaning Supplies Inventory from 08/16/2019.
6.	TII000003570	TII000003572	Dress code SOP's.
7.	TII000003573	TII000003577	Emergency Response SOPs.
8.	TII000003578	TII000003584	Pre-Operation Inspection Log.
9.	TII000003585	TII000003601	Daily cleaning logs for the onion lines.
10.	TII000003602	TII000003611	Weekly sanitation logs.
11.	TII000003612	TII000003616	Floor drains cleaning and sanitation log beginning on May 8, 2020.
12.	TII000003617	TII000003645	Food Defense Plan
13.	TII000003646	TII000003699	Pre-Operations log.
14.	TII000017566	TII000017598	Table of contents to SOPs revised in 2019.
15.	TII000017727	TII000017727	Harvest Container Cleaning/Sanitizing Log (Blank).
16.	TII000017728	TII000017730	Cleaning/Sanitizing SOP

1	17.	TII000018637	TII000018637	Flow chart for onion receiving, packing, shipping Apparently attached to email this date from Annie Baisden to Jack Thomson. Seems she created it to explain product flow to FDA.
2	18.	TII000018894	TII000018913	Life cycle of onion shipping.
3	19.	TII000025668	TII000025668	Nancy Anspach FSPCA Preventive Controls for Human Food, 02/08/2019.
4	20.	TII000025694	TII000025712	Garcia Diamond restroom service.
5	21.	TII000032067	TII000032070	Risk Assessment Growing SOP
6	22.	TII000032072	TII000032072	Food Safety doc in Spanish.
7	23.	TII000032073	TII000032077	GAP Food Safety Plan
8	24.	TII000032079	TII000032079	TII Org Chart
9	25.	TII000032083	TII000032085	Management Review SOP
10	26.	TII000032086	TII000032086	Industry Guidelines/Best Practices
11	27.	TII000032087	TII000032087	TII Resource Analysis
12	28.	TII000032088	TII000032089	Documentation & Record Keep SOP
13	29.	TII000032095	TII000032095	Master Document List, Module 2
14	30.	TII000032096	TII000032127	SOP Table of Contents
15	31.	TII000032128	TII000032130	How to Write a SOP

1	32.	TII000032131	TII000032133	Corrective Action Procedure SOP
2	33.	TII000032135	TII000032140	Regulatory Inspections SOP
3	34.	TII000032141	TII000032143	GAP Land History and Use And Irrigation Water Checklist
4	35.	TII000032144	TII000032149	Growing Area Selection SOP
5	36.	TII000032157	TII000032159	Grower Water Source Inspection SOP
6	37.	TII000032174	TII000032177	Water Microbiological Testing SOP
7	38.	TII000032178	TII000032178	Calibration SOP
8	39.	TII000032180	TII000032182	Material On Hold and Rejected SOP
9	40.	TII000032183	TII000032184	Product Release SOP
10	41.	TII000032185	TII000032188	Buyer & Consumer Complaints & Feedback SOP
11	42.	TII000032189	TII000032189	Farming Operation Approved Suppliers List
12	43.	TII000032190	TII000032196	Supplier Approval & Monitoring SOP
13	44.	TII000032253	TII000032255	Visitor/Contractor SOP
14	45.	TII000032257	TII000032261	Personal Food Training SOP
15	46.	TII000032275	TII000032280	Personal Food Training SOP
16	47.	TII000032281	TII000032283	Disciplinary Action SOP
17	48.	TII000032284	TII000032287	Return to Work SOP
18	49.	TII000032295	TII000032298	Pesticide Management SOP

1	50.	TII000032310	TII000032311	Chemical/Fertilizer/Pesticide Storage Inventory
2	51.	TII000032312	TII000032313	Pesticide Storage Inventory SOP
3	52.	TII000032314	TII000032316	Preventative Maintenance SOP
4	53.	TII000032317	TII000032319	Work Order/Maintenance SOP
5	54.	TII000032320	TII000032322	2020 TII Chemical List
6	55.	TII000032324	TII000032325	Food Safety Plan - Farming Operations.
7	56.	TII000032326	TII000032327	2020 Food Safety Plan - Farming Operations.
8	57.	TII000033949	TII000033971	Micro Testing SOPs with Michelson Lab Reports.
9	58.	TII000033972	TII000034015	2019 BC Labs and OxiDate Records.
10	59.	TII000034392	TII000034447	JJ Harvesting records. Food Safety Training certificates for Angel Nava, Manuel Cano, Joel Ocampo, Antonio Carranza, Froylan Chiquito, and Teresa Castillo.
11	60.	TII000034448	TII000034502	JJ Harvesting records, food safety, cleaning logs, SOPs, certificates.
12	61.	TII000034503	TII000034553	JJ Harvesting records, restroom service logs, water report, permits, SOPs,

1			certificates.
2	62.	TII000034554	TII000034770 JJ Harvesting records. SOPs, cleaning logs, training certification.
3	63.	TII000034771	TII000035417 JJ Harvesting records, SOPs, sanitation, temperature logs, certifications.
4	64.	TII000035418	TII000035567 JJ Harvesting records. SOPs, sanitation, certificates.
5	65.	TII000035568	TII000035846 JJ Harvesting records, SOPs, sanitation, temperature logs.
6	66.	TII000035847	TII000036026 JJ Harvesting records, SOPs, temperature logs, certifications.
7	67.	TII000036027	TII000036181 JJ. Harvesting records, SOPs, sanitization records, temperature logs, certificates.
8	68.	TII000036182	TII000036926 JJ Harvesting Records. Food safety, SOPs, certificates.
9	69.	TII000036927	TII000036990 JJ Harvesting records. Food safety training meeting, SOPs, certificates.
10	70.	TII000036991	TII000037042 JJ Harvesting records. Food safety, cleaning, SOPs, certificates.
11	71.	TII000037043	TII000037091 JJ Harvesting records. Food safety, SOPs, certificates.
12	72.	TII000037092	TII000037182 JJ Harvesting records. Food safety, SOPs, certificates.

1	73.	TII000037183	TII000037354	JJ Harvesting records. SOPs, food safety, certificates of completion.
2	74.	TII000038008	TII000038025	Monitoring Logs Procedures
3	75.	TII00063235	TII00063513	General Training SOP
4	76.	TII000063515	TII000063539	Audit Meeting Logs
5	77.	TII000037631	TII000037631	TII Board Conference Call, 01/22/2020
6	78.	TII000037632	TII000037633	TII Board Meeting Minutes, 03/27/2020

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12 **Defense Exhibit 3: Risk Assessments**

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No.	Begin Bates	End Bates	Description
1.	TII000032264	TII000032264	KEI -BV Risk Assessment
2.	TII000032265	TII000032265	KEI SKO Risk Assessment
3.	TII000032266	TII000032266	RG 161 Risk Assessment.
4.	TII000032268	TII000032268	RR Holtville Ash Risk Assessment.
5.	TII000032269	TII000032269	Ranch 3 Risk Assessment
6.	TII000032270	TII000032270	TII Glad Risk Assessment
7.	TII000032288	TII000032288	Delis Water Source Risk Assessment.
8.	TII000032291	TII000032291	KEI Field BV Canal

			Water Source Risk Assessment.
9.	TII000032292	TII000032292	KEI Field SK Canal Water Source Risk Assessment.
10.	TII000032293	TII000032293	TII Glad Water Source Risk Assessment.
11.	TII000032294	TII000032294	TII R3 Water Source Risk Assessment
12.	TII000032386	TII000032387	Ash 11 Pre-Harvest Risk Assessment
13.	TII000032388	TII000032389	BV-Sec 10 Preharvest Risk Assessment.
14.	TII000032419	TII000032420	Fld 32 50 ac Preharvest Risk Assessment.
15.	TII000032423	TII000032424	Gladestone Pre-harvest Risk Assessment.
16.	TII000032429	TII000032430	Pepper 22 Preharvest Risk Assessment.
17.	TII000032432	TII000032433	RG-FLD 161 Pre-Harvest Risk Assessment
18.	TII000032434	TII000032435	RG161 Preharvest Risk Assessment
19.	TII000032436	TII000032437	Skone Preharvest Risk Assessment
20.	TII000032588	TII000032588	Holtville Risk Assessments.

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Defense Exhibit 4: Water Testing

No.	Begin Bates	End Bates	Description
1.	TII000025904	TII000025916	Email from Nicole Yuen stating that one of the samples collected does not match the outbreak strain.
2.	TII000032288	TII000032288	Delis Water Source Risk Assessment.
3.	TII000002800	TII000002800	Michelson Lab report number 072520-M627286A.
4.	TII000017599	TII000017601	BC Laboratories, Inc., Water Analysis (Bacteriological), dated 03/04/2019, for Well 1.
5.	TII000017602	TII000017602	Water Test
6.	TII000025797.000001	TII000025797.000002	FDA Receipt for fields and samples.
7.	TII000032558	TII000032558	BC Labs water testing from 13 Palms.
8.	TII000032579	TII000032586	BC Labs testing for Well #1.
9.	TII000032590	TII000032596	BC Lab reports for bacteriological testing taken on April 10, 2020.
10.	TII000033939	TII000033948	BC Labs testing for: Domestic, Packing Plant

1			Well, Well, Well
2			Discharge

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4 **Defense Exhibit 5: Onion Testing**

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No.	Begin Bates	End Bates	Description
1.	TII000025764	TII000025768	Email between Nicole Yuen and Jack Thomson, indicating that TII onion samples from Bakersfield were all negative for Salmonella. Table of samples included earlier in thread. Some results still pending.
2.	TII000025769	TII000025775	Email between Jack Thomson and Nicole Yuen, updating with further salmonella testing of TII samples: All negative.
3.	TII000025797.000001	TII000025797.000002	FDA Receipt for fields and samples.
4.	TII000025830	TII000025837	Email from Jack Thomson asking Nicole Yuen about sample results.
5.	TII000025942	TII000025942	Email with lab results for some FDA samples.

1	6.	TII000025946	TII000025947	Jack Thomson stated he received an additional negative sample notice from Jennifer Kinney.
2	7.	TII000026054	TII000026067	Jack Thomson thanking Nicole Yuen for informing him of the CDC web post going live. Also updated sample list with some positive salmonella samples.
3	8.	TII000026099	TII000026100	Email string with GPS coordinates of positive salmonella samples from TII.
4	9.	TII000027225	TII000027225	Michelson Lab report 072520-M627284A, DATED 07/25/2020.
5	10.	TII000003172	TII000003182	FDA List of Sample test results.
6	11.	TII000020475	TII000020475	Email from Donna Williams-Hill stating negative salmonella for 43/43 subsamples.
7	12.	TII000032643	TII000032650	Email from Nicole Yuen to Jack Thomson with sample updates.
8	13.	PH PLAINTIFF 001223	PH PLAINTIFF 001226	Email string between Brandon Adcock to Jeff

			Vidanes, dated 07/28/2020
14.	PH PLAINTIFF 001940	PH PLAINTIFF 001966	Memo from Daniel Gorski to Brandi McGrady, dated 08/28/2020.
15.	AUSTIN1663	AUSTIN1666	Email from Jeff Vidanes to Michael Needham, dated 07/28/2020.
16.	Exhibit 5 to Kramer Report		Photographs of Holtville Drain Ditch Sampling Site
17.	Exhibit 7 to Kramer Report		Photographs from Prosser Washington

Defense Exhibit 6: Primus Records

No.	Begin Bates	End Bates	Description
1.	TII000017527	TII000017557	Primus Standard Packinghouse Final Audit Report
2.	TII000018302	TII000018330	Primus Audit Report for Ranch 3, 2018.
3.	TII000018331	TII000018332	Primus Audit Certificate for Ranch 3, June 1, 2018 to May 31, 2019.
4.	TII000023393	TII000023412	Primus audit for DiGiogio Rd,

1	2	3	4	Bakersfield. Audit on 04/20/2020. Certification valid from May 13, 2020 to May 12, 2021.
5	6.	TII000023413	TII000023414	Primus certificate for Ranch 3 at DiGiogio Rd, valid from May 13, 2020 to May 12, 2021. Final audit score 97%.
9	10.	TII000023446	TII000023447	Primus Standard Packinghouse audit from August 28, 2019. Score 94%.
13	14.	TII000023460	TII000023477	Primus Final Audit Report for Kei Filed Skone, located in Tejon Rd, Bakersfield, dated April 20, 2020.
18	19.	TII000023478	TII000023482	Primus Corrective Action Report for Kei Field Skone, dated April 20, 2020.
21	22.	TII000023483	TII000023484	Primus Certificate for Kei Field Skone, Tejon Road, dated from May 28, 2020 to May 27, 2021. Audit score 97%.
26	27.	TII000023486	TII000023490	Primus audit "Corrective Action Report" for Kei Field BV, located at

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28		
Buena Vista Blvd, Bakersfield, dated April 20, 2020.																													
11.					TII000023491					TII000023509					Primus Final Audit Report for Kei Field BV dated April 20, 2020.														
12.					TII000023510					TII000023511					Primus Certificate for Kei Field BV from May 28, 2020 to May 27, 2021.														
13.					TII000026686					TII000026708					Primus Final Audit Report for Brawley Onions located at Hilfiker Rd & Anderholt Rd & McCabe Rd, Brawley, CA														
14.					TII000026709					TII000026710					Primus Certificate for Brawley Onions valid from May 15, 2019 to May 14, 2020. Audit score of 95%.														
15.					TII000026733					TII000026734					Primus Certificate for Evergrow, Hageman & Wegis Bakersfield, CA for May 28, 2019 to May 27, 2020.														
16.					TII000026795					TII000026796					Primus Certificate for Kirschenmann, Bakersfield, CA, from May 28, 2019 to May 27,														

1			2020.
2	17.	TII000026837	TII000026838 Primus Certificate for Ranch 3, Bakersfield, CA, from May 28, 2019 to May 27, 2020.
3	18.	TII000027060	TII000027091 Primus audit report for Highline Cooling LLC located in Holtville, CA on January 8, 2020.
4	19.	TII000027092	TII000027099 Primus corrective action report for Highline Cooling LLC.
5	20.	TII000027100	TII000027101 Primus Certificate for Highline Cooling LLC.
6	21.	TII000032023	TII000032024 2020 Primus GFS Gladstone Certificate.
7	22.	TII000032056	TII000032057 Primus KEI Field Skone Certificate, 05/28/2020 to 05/27/2021.
8	23.	TII000034351	TII000034371 Ash 11 Primus Report.
9	24.	TII000037978	TII000038000 Primus Audit binder.

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22 **Defense Exhibit 7: TII Fields**

No.	Begin Bates	End Bates	Description
1.	TII000017723	TII000017723	2020 lot chart.
2.	TII000019908	TII000019923	GPS Field Locations
3.	TII000032256	TII000032256	Ranch 3 Site Map.
4.	TII000032262	TII000032262	Ranch 3 Map

1	5.	TII000032263	TII000032263	Ranch 3 Operations Map
2	6.	TII000032323	TII000032323	Field crop history.

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